

**CU2023-0002 JC Excavation
APPEAL**
80 S. Robinson Blvd





APPEAL OF DECISION MASTER APPLICATION

PROPERTY OWNER	OWNER NAME: Alejandro Jimenez
	MAILING ADDRESS: 240 N. McDermott Road, Nampa, ID 83687
	PHONE: [REDACTED] EMAIL: [REDACTED]
I consent to this application and allow DSD staff / Commissioners to enter the property for site inspections. If the owner(s) is a business entity, please include business documents, including those that indicate the person(s) who are eligible to sign.	
Signature: <u>Alejandro Jimenez</u> Date: <u>7-7-23</u>	

APPLICANT: IF DIFFERING FROM THE PROPERTY OWNER	OWNER NAME: Juan Carlos Nieves, Applicant / Elizabeth Allen, Representative	
	COMPANY NAME: JC Excavation LLC / Bristlecone Land Use Consulting LLC	
	MAILING ADDRESS: 3812 E. Clear Springs Dr, Nampa, 83686 / PO Box 3953, Nampa, 83653	
	PHONE: 208-401-5246 / 907-978-3439	EMAIL: jcexcavation10@gmail.com / elizabeth@bristleconelanduseconsulting.com

SITE INFO	STREET ADDRESS: 80 S. Robinson Road, Nampa, ID 83686
	PARCEL NUMBER: R30624010
	PARCEL SIZE:

CASE NUMBER OF REQUESTED APPEAL:	CU2023-0002
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FOR DSD STAFF COMPLETION ONLY:

CASE NUMBER	<u>CU2023-0002-APL</u>	DATE RECEIVED:	<u>7/14/23</u>
RECEIVED BY:	<u>S. Hammond</u>	APPLICATION FEE:	<u>600.00</u> <input checked="" type="radio"/> MO <input type="radio"/> CC CASH



Bristlecone

LAND USE CONSULTING

July 14, 2023

Canyon County Development Services
111 North 11th Ave., #310
Caldwell, Idaho 83605

Re: Appeal of Planning and Zoning Commission Decision on Conditional Use Permit for JC Excavation CU2023-0002.

Dear Development Services staff and Board of County Commissioners,

On behalf of the applicant/appellant, Bristlecone Land Use Consulting LLC, representing JC Excavation LLC ("Appellant"), I am submitting this appeal of the Planning and Zoning Commission's ("Commission") denial of CU2023-0002, an application for a staging area on parcel R30624010 in an "A" (Agriculture) zone.

The grounds for this appeal are as follows:

- The decision of the Planning and Zoning Commission was not supported by substantial evidence.
- The applicant was not provided with a fair hearing process.

The factual basis from the record and arguments supporting this appeal are outlined in four (4) sections in this document and exhibits, including proposed conditions of approval to mitigate concerns.

Sincerely,

Elizabeth Allen

CU2023-0002 APPEAL

SECTION 1. OVERVIEW

History

JC Excavation LLC, owned by Juan Carlos Nieves and managed by Mario Nieves, has been a registered business with the Idaho Secretary of State since 2017 and provides quality services for construction projects in the Treasure Valley. In June 2022, JC Excavation began leasing the western portion of the subject parcel for a staging area. Based on Google Street images dating back to 2007, the site used for staging had been unutilized for some time.

Conditional Use Permit

When JC Excavation began using the area, they were unaware that County approvals would be needed. After learning of the requirement, they applied for a Conditional Use Permit to bring the use into compliance.

Proposal Details

As outlined in the application for CU2023-0002, the equipment and staging materials include two bulldozers, three excavators, five skid steers, one loader, eight dump trucks/trailers, ten flatbed trailers, eight pickup trucks, two hydraulic hammers, equipment buckets, and dirt storage. They currently have 20 employees and operate Monday through Friday. The average start and end times are 8:00 a.m. and 8:00 p.m. The hours vary slightly throughout the year due to seasonal and economic changes. Adequate employee parking is located between the material staging and equipment staging areas. For certain jobs, some equipment remains on the job site. Since they started using the site, they relocated the equipment from the Robinson Road frontage to the center of the site to address a neighbor's concern about the view from their property.

Neighborhood Meetings

Before submittal, they held two neighborhood meetings. Letters were sent to twenty neighbors. Four individuals attended the first meeting, and six individuals at the second. Concerns brought up included other uses in the area and traffic. A neighbor derailed the meeting by making false and inappropriate accusations. They interrupted the discussion by asking, "Where do you come from?" and harassing the owner for having a different ethnic background than themselves. These neighbors created a hostile environment for the applicant and the others in attendance. They also harassed another property owner who disagreed with them. The video from this meeting will be included as part of the record for this case. The hostility and discrimination from this neighbor made it difficult for JC Excavation to have constructive discussions about mitigation measures before submission.

Application Submittal and Public Hearing

On February 9, 2023, the applicant submitted a conditional use permit application for a staging area in an "A" (Agricultural) zone. A staging area is defined in Canyon County Code as "an area where equipment and materials are stored for use conducted entirely off-site."

At its June 15, 2023, public hearing, with a staff recommendation of approval, the Canyon County Planning and Zoning Commission voted to deny the applicant's case for a staging area, case No. CU2023-0002. In the motion for the denial, the Commission changed the findings for criteria 4, 7, and the language regarding the Nampa Area of City Impact. The Planning and Zoning Commission's findings were signed on July 6, 2023.

During the public hearing, the commission brought up concerns that they believed could be mitigated through conditions. During rebuttal, Juan Carlos Nieves testified that he would be willing to agree to any conditions of approval. At this time, the Commission did not explore what conditions could be added or what information would be needed to help them make an informed decision. During deliberations, after public testimony was closed, Commissioner Nevill stated, "I think this could be conditioned, but we can't do it at this table tonight; it is going to

require some crafting of conditions.” This statement indicates that the applicant was not provided a fair hearing and that staff and the applicant were not provided time to propose additional conditions. In addition, the decision made was not based on factual evidence. In the following sections, we provide an analysis of the criteria changed by the Commission to deny the request and have provided evidence and crafted conditions shown in Section 3 to support the reversal of the denial.

SECTION 2. ANALYSIS

A. The Commission's finding that the applicant's staging area will be “injurious to other property in the immediate vicinity and/or negatively change the essential character of the area” is not supported by substantial evidence.

The zoning of the subject property and surrounding area is Agriculture with future land use designations of Agriculture. As stated in the case staff report, the surrounding uses include agricultural production, rural residential, scattered businesses, and storage of various objects. Within one (1) mile of the property is a gravel pit to the north and a feedlot and dairy to the south. The staging area is a fair distance from homesites, with the closest homesite being approximately 300 feet away. There are also a few staging areas and similar businesses in the area shown in the table below (this list only includes businesses that are registered with the Secretary of State).

Business	Location	Distance from site	Exhibit
Elliot Scott Earthmoving	96 Robinson Blvd	Southern neighbor	B, Image 1 and 2
Idaho Backhoe Inc	419 Robinson Blvd	2,000 feet to the south	B, Image 9
New Life Landscape	6621 Amity Avenue	3,200 feet to the south	B, Image 10

Several properties are used to store materials and vehicles in the area without any mitigation measures (Exhibit B). The closest property immediately adjacent to the north has several scattered semi-trailers in various states of disrepair, cars, jet skis, recreational vehicles, snowmobiles, a washer, and multiple materials (Exhibit B, Image 4-6).

The area has active agricultural production that generates dust, smells, and noise. Farming requires various equipment, including the same equipment used by JC Excavation, such as skid steers, dump trucks, bulldozers, excavators, and flatbed trailers that can be seen staged on properties throughout the area. This same equipment is used for maintaining irrigation canals and landscaping businesses (Exhibit B, Image 10).

Aerial site images are shown in Exhibit B, Images 11 and 12, showing a birds-eye view of the rural character. As described and shown in the images in Exhibit B shows the existing rural character of the area. The analysis provides evidence that the proposed use of a staging area will not be injurious to properties in the vicinity or negatively change the area's character. The conditions presented in Section 3 will provide an opportunity to improve the site and location.

B. The Commission’s finding that the applicant's staging area will create “undue interference with existing or future traffic patterns” is not based on factual evidence.

No evidence has been provided to indicate that the use of a staging area will cause undue interference with existing or future traffic patterns. Highway Districts must “consider the impacts of a proposed development on nearby land uses and transportation facilities” and require that developers/applicants provide a study if the development

exceeds the threshold traffic volumes.¹ In other words, the Highway District would require a traffic impact study if the peak hour trips of the proposed use reached a level that would cause undue interference with traffic patterns.

Nampa Highway District No. 1 provided comment in response to the public agency notifications and responded, "For a commercial approach we require a paved apron per ACCHD Standards. I have attached a copy of our spec sheet that we require the approach be built to. They would need to permit for any improvement to the access. No new points of access would be allowed as Robinson Rd is classified as a Principal Arterial. Per ACCHD Standards, there is no new direct access to arterial roadways." The response by the Highway District provides sufficient evidence that the proposal does not create undue interference with traffic patterns.

C. The Commission's finding that the use will impact Nampa's vision for the area is premature and not based on factual evidence.

There was discussion during the hearing regarding the City of Nampa without a debate on how far the city limits are or Canyon County code. As stated in County Code 09-11-17(1), Applicable Comprehensive Plan and Comprehensive Plan, "Comprehensive Plan: The Canyon County comprehensive plan, as amended, shall apply to the Nampa area of city impact. Canyon County recognizes that city of Nampa has also developed a comprehensive plan and accompanying map for the Nampa area of city impact. Canyon County shall give consideration to the city's comprehensive plan designations when evaluation development requests with the Nampa area of city impact." While hearing a different case on the same evening, Commissioner Sheets told that applicant, "You are working with the County, and you are subject, and this application is going through the County; it is not going through Middleton." This statement is unfair and indicates that the Commission is picking and choosing what City they decide to agree or not agree with despite the Canyon County code requiring the County Future Land Use map to apply in both cities' area of city impact.

While we understand the concerns regarding Nampa, the city limits are approximately one (1) mile from the site. Over time Nampa city limits may reach the site, and at that time, the area's character will have changed enough that a staging area would not be appropriate. We are proposing a condition in Section 3 to mitigate the concern and ensure that the site will meet the vision of Nampa when city limits are closer.

SECTION 3. CONDITIONS

As explained above and the evidence provided in section two and Exhibit B, the proposed staging area is consistent with the area's existing character. As shown in the site images in Exhibit A, the use is orderly and maintained. Concerns, including noise, dust, and views, were raised during the public hearing. To mitigate these concerns, we are proposing the following conditions. These conditions, with the conditions originally proposed by staff, are shown in Exhibit D.

- **A berm and sight obscuring fence shall be installed along the frontage of Robinson Blvd, outside of any right-of-way, easements, and sight triangles. The berm shall be planted with landscaping to prevent erosion.**
- **A sight-obscuring fence shall be installed along the northern property line adjacent to the area used for staging.**

Berms and sight-obscuring fences are adequate mitigation measures for screening uses and reducing noise and dust. This measure will provide an opportunity to improve the look of the area. See Exhibit C for examples of berms in the area.

¹ Highway Standards & Development Procedures for the Association of Canyon County Highway Districts 2022 Edition
<https://www.canyonhd4.org/download/2022-acchd-highway-standards-and-development-procedures-manual/?wpdmdl=1584&refresh=64a392b8be41f1688441528>

- **Stockpiles of dirt will be watered during movement to prevent dust.**
- **The use of the staging area shall terminate at such time that Nampa city limits are touching the subject property on two sides.**

This condition will address concerns regarding the City of Nampa to ensure that the use does not continue when it grows.

SECTION 4. CONCLUSION

As shown in the analysis with supporting evidence, a staging area will not change the area's character, and traffic will not be impacted. The appellant is willing to accept the proposed conditions and is open to additional conditions to support approval. We respectfully request that the Board of County Commissioners reverse the decision of the Planning and Zoning Commission and approve the request with the proposed conditions added to the conditions originally offered by the Development Services staff.

EXHIBIT A - SITE PHOTOS

Below are images of the site taken on July 6, 2023.



Image 1 Staging area.



Image 2. Staging area. The trailers in the background are on the property to the north.



Image 3. Employee parking.



Image 4. Driveway.



Image 5. Dirt staging area.

EXHIBIT B

Images 1 through 8 were taken on July 3, 2023, providing context regarding the area's character. Images 9 and 10 are 2023 aerial images created on landproDATA mapping.



Image 1. 96 Robinson that is used by Elliot Scot Excavation south of the site.



Image 2. The southern side of 96 Robinson.



Image 3. 81 Robinson has several vehicles and materials stored on the property.



Image 4. 64 Robinson with several vehicles, trailers, and jet skis stored on the property.



Image 5. 64 Robinson with several trailers, jet skis, and material stored on the property.



Image 6. 64 Robinson with several more vehicles and materials stored on the property.



Image 7. 61 Robinson and agricultural land.



Image 8. 52 Robinson

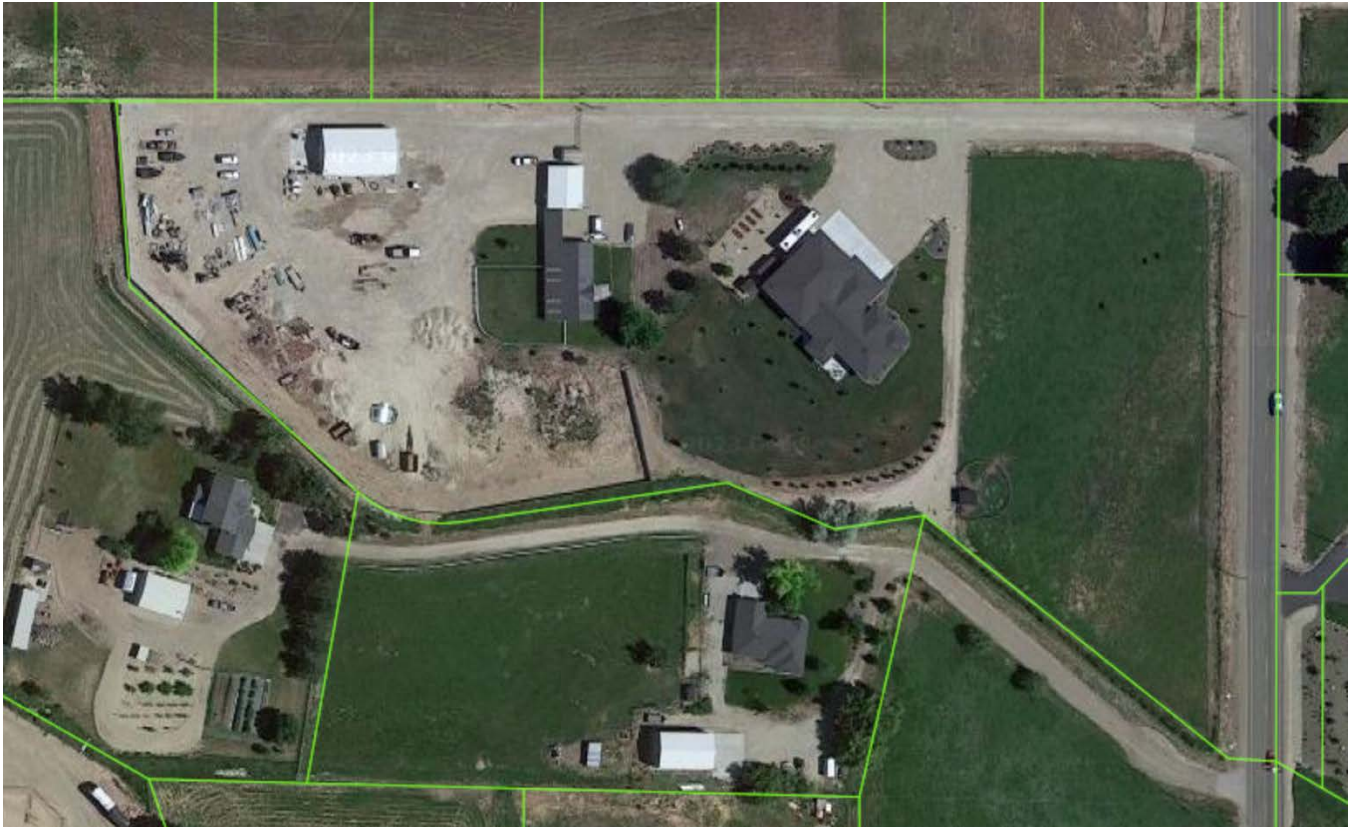


Image 9. 419 Robinson. Idaho Backhoe Inc.



Image 10. 6621 Amity Avenue, New Life Landscaping

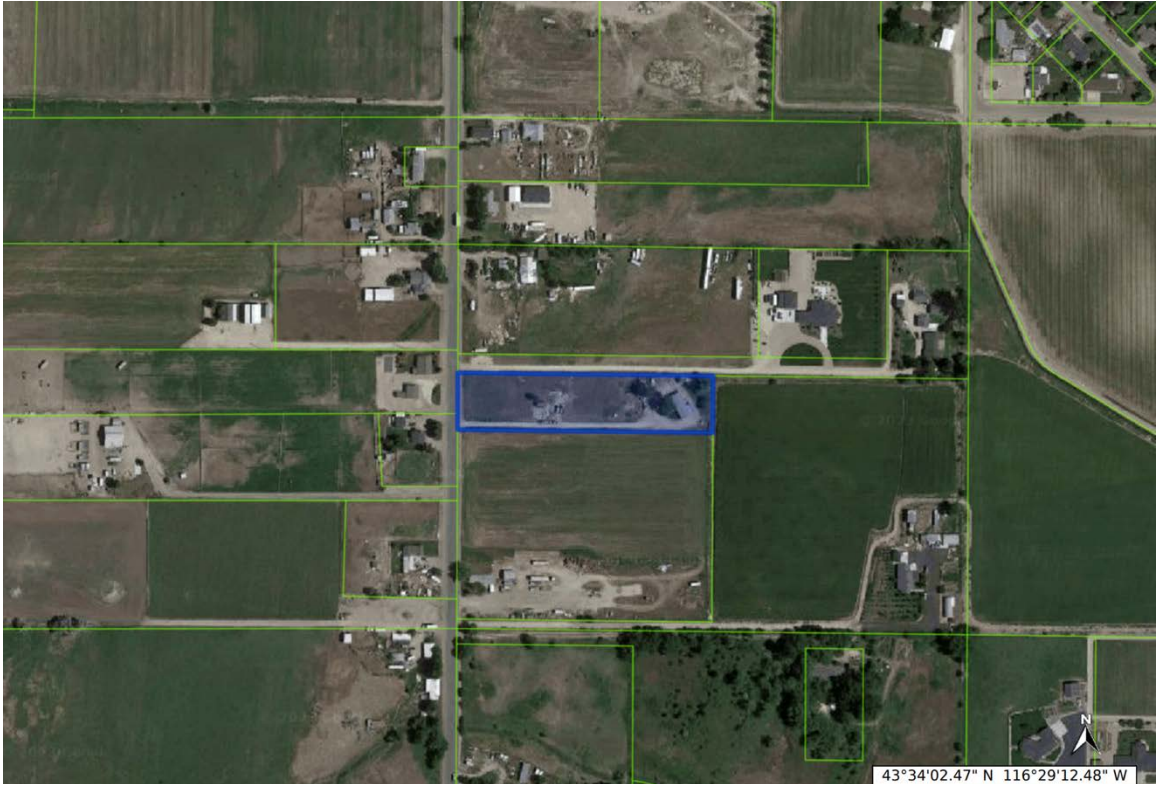


Image 11. Aerial image of approximately 2,000 feet of the area of the subject property.

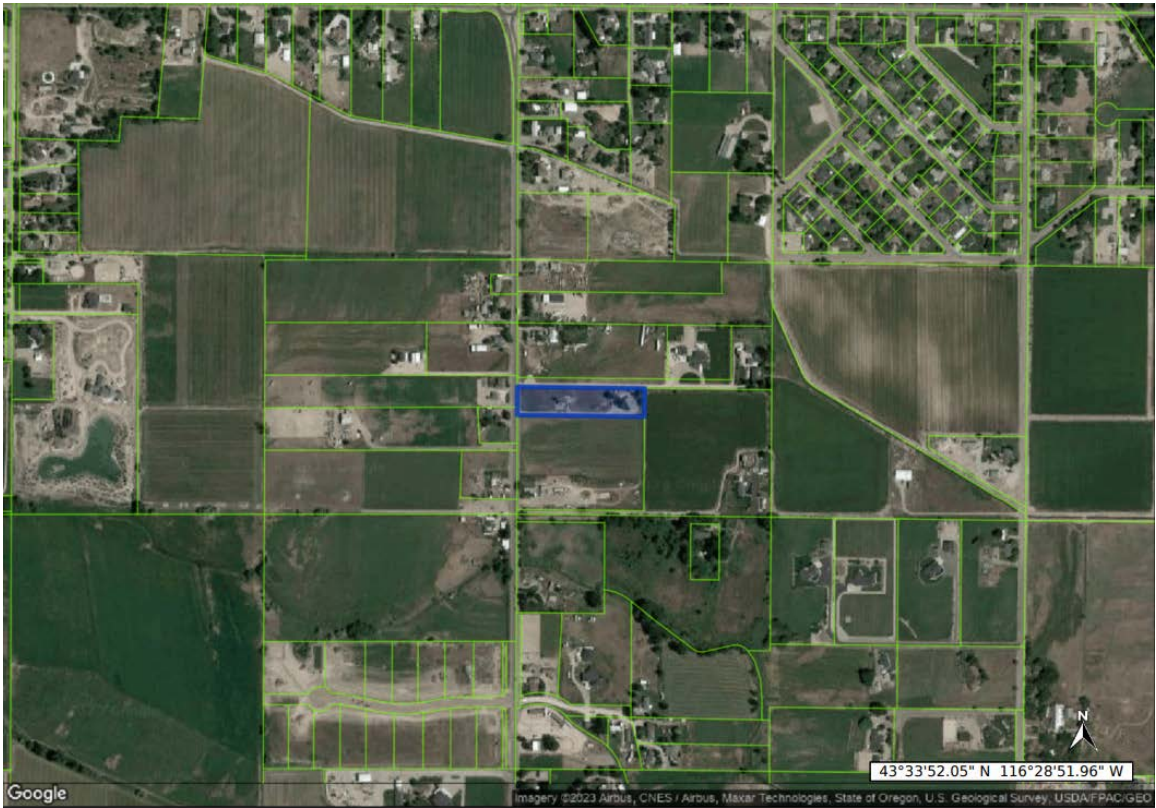


Image 12. Aerial image of approximately 4000 feet of the area of the subject property.

EXHIBIT C

Below are examples of berms in the area taken on July 2 and July 6, 2023.





EXHIBIT D

The following is a complete list of the staff-recommended conditions of approval in addition to the proposed conditions. Condition 3 was removed and replaced with specific language.

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the subject property and the proposed use.
2. The applicant shall comply with Nampa Highway District access requirements.
3. A berm and sight obscuring fence shall be installed along the frontage of Robinson Blvd, outside of any right-of-way, easements, and sight triangles. The berm shall be planted with landscaping to prevent erosion. The frontage of the property off Robinson Rd must have a privacy berm or fence. The berm/fencing shall be maintained and kept in good repair shall be kept weed free and/or maintained.
4. A sight-obscuring fence shall be installed along the northern property line adjacent to the area used for staging.
5. Stockpiles of dirt will be watered during movement to prevent dust.
6. The use of the staging area shall terminate at such time that Nampa city limits are touching the subject property on two sides.
7. All exterior lighting, if installed, shall be downward facing and directed away from surrounding properties.
8. Signage shall meet CCZO §07-10-13 requirements.
9. The hours of operation shall be 8:00 a.m. to 8:00 p.m. Monday through Friday, as proposed in the applicant's letter of intent (Exhibit B Attachment 1a, 1b).
10. This conditional use permit must follow land use time limitation as stated in CCZO 07-07-23: "When a conditional use permit is granted, the land use or construction of its facility proposed in the application must have commenced within three (3) years of the date of the final decision by the presiding party or a court of appropriate jurisdiction. The improvements for the approved use must be completed within five (5) years of the same date.